TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 273.

GRANVILLE RIPPEY, PLAINTIFF IN ERROR,

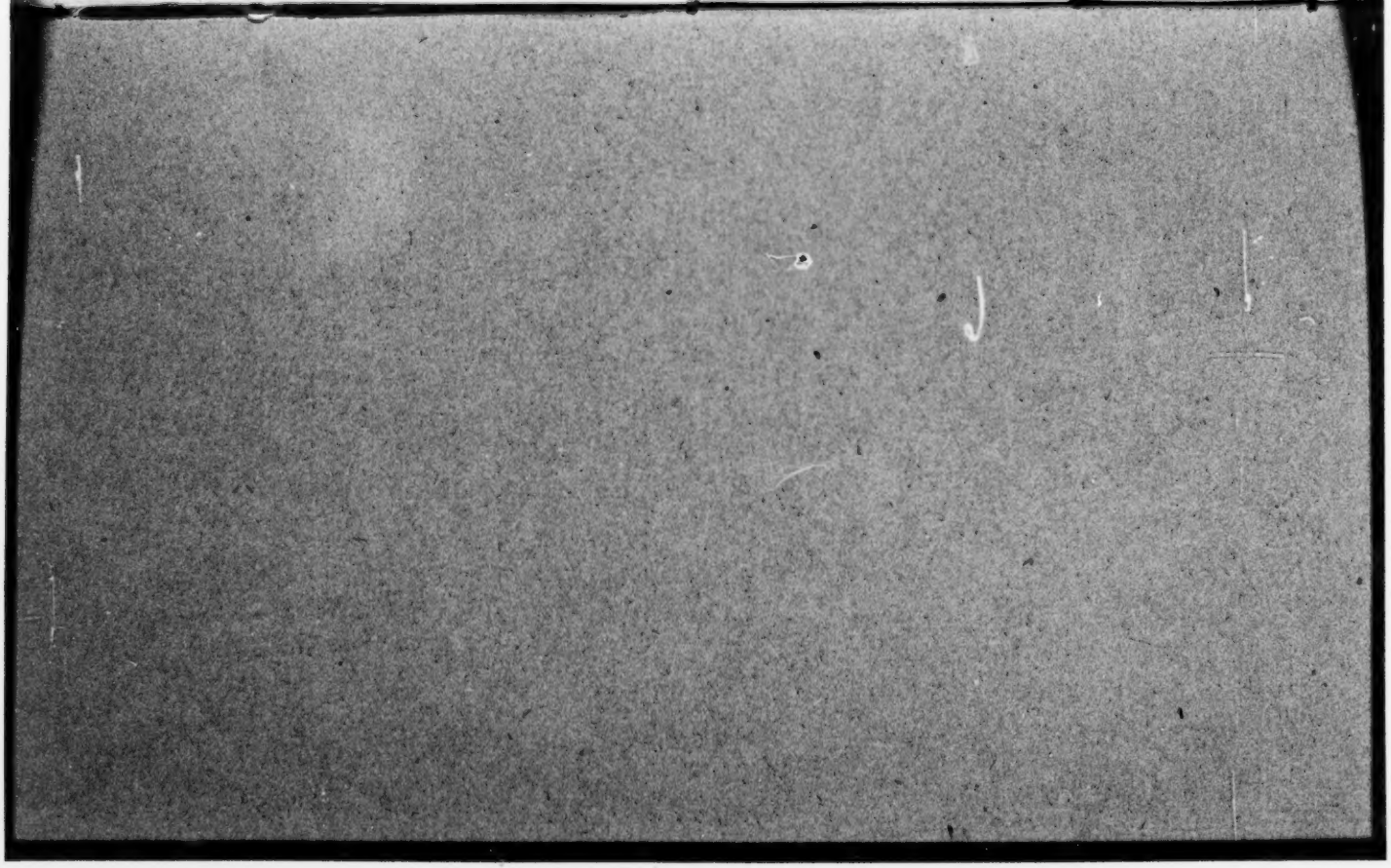
vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

FILED MAY 6, 1903.

(18,919.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 10, 1903.

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1 *Caption.*

THE STATE OF TEXAS:

At a term of the court of criminal appeals of the State of Texas begun and holden within and for the State of Texas, at Dallas, Texas, the Honorable W. L. Davidson, presiding judge thereof, the following cause came on to be heard on the transcript of the record, and on briefs of both parties, to-wit:

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. (1st Assignment.)

Caption.

Transcript of the proceedings had in the county court of Grayson county, Texas.

THE STATE OF TEXAS, }
County of Grayson. }

At a term of the county court of Grayson county, Texas, begun and now being holden within and for the county of Grayson, at Sherman, the Honorable G. P. Webb, judge thereof presiding, the following cause came on for trial, to-wit:

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

2 *Complaint.*

In the name and by the authority of the State of Texas:

W. M. Blaylock, being duly sworn on his oath deposes and says on information and belief that in the county of Grayson, and State of Texas, on the 8th day of February, 1902, an election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published to determine whether or not the sale of intoxicating liquors should be prohibited in commissioners' precinct No. 4 of said county, and the qualified voters at said election did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioners' precinct of said county, and thereupon the commissioners' court of said county did pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said commissioners' precinct. And

thereafter, on to-wit; the 18th day of April, 1902, in said commissioners' precinct in said State of Texas and county of Grayson one Granville Rippey did unlawfully sell to W. J. Anderson one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State.

W. M. BLAYLOCK.

Signed and sworn to before me, this April 19th, 1902.

J. H. TRUETT,
County Attorney, Grayson County, Texas,
By JNO. T. SUGGS, *Ass't.*

Filed Apr. 19", 1902.

P. F. ELLIS,
Clk Co. Ct., Grayson Co., Texas,
By AMY ELLIS, *Deputy.*

3 *Information.*

In the name and by the authority of the State of Texas:

The county attorney for Grayson county, Texas, information makes in the county court in and for said county, that in the county of Grayson, State of Texas, on the 8th day of February A. D. 1902, an election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published, to determine whether or not the sale of intoxicating liquors should be prohibited in commissioners' precinct No. 4 of said county, and the qualified voters at said election did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioners' precinct of said county, and thereupon the commissioners' court of said county did pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said commissioners' precinct. And thereafter, on to-wit: the 18th day of April, 1902, in the said commissioners' precinct in said State of Texas and county of Grayson, one Granville Rippey did unlawfully sell to W. J. Anderson one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State.

J. H. TRUETT,
County Attorney for Grayson County, Texas.

Filed Nov. 29", 1902.

P. F. ELLIS,
Clerk of the County Court, Grayson Co., Texas,
By AMY ELLIS, *Deputy.*

4 *Def't's Motion to Quash Complaint and Information.*

In the County Court of Grayson County, Texas, January Term, 1903.

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. —.

Now comes the defendant, and moves the court to quash the purported affidavit and the purported complaint thereupon against him herein, because the same charge no offense, in that they fail to charge any violation of law, in that arts. 3384 to 3399, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited, is also void, upon the following grounds and for the following reasons, to-wit:

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

5 3.

Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government, in that, in contravention to the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views and against other persons and citizens holding opposite views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that, as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That article 3395 operates to deny to the citizens the equal protection of the law, in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated, and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies equal protection of the law in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in a large district, to be selected by them, which shall include the said town or city, and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if at an election, prohibition should carry in any town or city, it cannot be defeated by an inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said statute further denies the equal protection of the law in that it provides that when prohibition has been carried at an election in

the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

Wherefore, premises considered, defendant prays this honorable court to quash, vacate, set aside and hold for naught the purported affidavit and information exhibited herein against him, and as etc.

CLARK & BALINGER,
MOSELEY & EPPSTEIN,
ETHERIDGE & BAKER,
Attorneys for Defendant.

Filed Jan. 15, 1903,

P. F. ELLIS, *Co. Clerk.*
By AMY ELLIS, *Deputy.*

Order of Court Overruling Motion.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

Now on this day came on to be heard the motion made by defendant, Granville Rippey, to quash the purported affidavit
8 and the purported complaint thereon against him herein, and the same, having been considered by the court, is in all things overruled, to which action of the court defendant in open court excepted and said exception is here entered of record.

Judgment of the Court.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

This day the above entitled and numbered cause being called for trial, appeared the parties, the State by her county attorney, and the defendant, Granville Rippey, in person and by attorney, and announced ready for trial. And the defendant Granville Rippey pleaded not guilty to the information herein, and a jury being

waived, the cause was submitted to the court, who, after having heard the information read, the defendant's plea of not guilty, the evidence submitted and the argument of counsel thereon, finds the defendant, Granville Rippey, is guilty of the offense as charged in said information and assesses his punishment at a fine of twenty five dollars and imprisonment in the county jail of Grayson county for twenty days.

It is therefore considered, ordered and adjudged by the court that the State of Texas do have and recover of and from the said defendant, Granville Rippey, the amount of said fine, to-wit, the sum of twenty five dollars and all costs of this prosecution; and that the defendant Granville Rippey, being present in the court, he is further ordered into the custody of the sheriff to be by him committed to the jail of said county there to be confined for a period of twenty days from this date, and further, until the fine and costs aforesaid are fully paid and it is ordered that execution may issue against the property of said Granville Rippey for the amount of such fine and costs.

9 *Statement of Facts.*

STATE OF TEXAS, }
Grayson County. }

In the County Court of Grayson County, Texas, — Day of Feb., 1903.

STATE OF TEXAS }
vs. }
GRANVILLE RIPPEY. }

Be it remembered that on the trial of the above entitled and numbered cause, the following contains all of the facts proved, to-wit:

1.

1st. That commissioners' district No. 4 of Grayson county, Texas, is composed of two justice's precincts, each of which is composed of three voting boxes.

2nd. That on or about the 8th day of November, 1901, a prohibition election was held in the western justice precinct, to-wit, justice precinct No. 6, which election resulted in favor of prohibition.

3rd. That prior thereto several months, an election was held in the town of Pottsboro, which was one of the voting boxes in the eastern justice precinct, which election was contested and resulted in no election.

4th. That after said election had been held in the Pottsboro box and before the election (hereinabove referred to as being held in justice precinct No. 6) was held, an election was called for the entire eastern justice precinct, to-wit, justice precinct No. 7. This election resulted against prohibition.

5th. That thereafter, to-wit, sometime during the fall of 1901, an election was held in two school districts in justice precinct No. 7, which election was held in the voting box of Preston. This election resulted in favor of prohibition.

6th. By reason of the foregoing elections after the 8th day
10 of November, 1901, every box in commissioners' district No. 4, excepting only two boxes called, respectively, Pottsboro and Locust, had already declared in favor of prohibition at the various elections hereinbefore mentioned and in the only elections in which these two boxes were included, the result had been against prohibition.

7th. An election was thereafter called on to-wit, the 2nd day of February 1902, for all of commissioners' district No. 4 which included all of the boxes hereinbefore mentioned that had gone "dry" and the two boxes known as Pottsboro and Locust, which had at all previous elections gone "wet," and which it is admitted in open court were the only portions of the district that had not previously by a vote declared in favor of prohibition. This election resulted in favor of prohibition.

8th. All such elections were held in the manner prescribed by the Revised Statutes of the State of Texas.

9th. The uncontradicted proof was that on the day mentioned in the information and complaint herein, Granville Rippey, at Pottsboro in commissioners' district No. 4, sold one bottle of whiskey to —— —— for the sum of one dollar. No evidence was offered by the defendant.

It is agreed in by the parties in the above entitled and numbered cause that the foregoing is a correct statement of all of the facts admitted and proved in evidence on the trial of said cause.

Witness our hands this 5th day of February A. D. 1903.

GRANVILLE RIPPEY,
By ETHERIDGE & BAKER,
CLARK & BALLINGER,
MOSELEY & EPPSTEIN, *Attorneys.*
J. H. TRUETT,
11 *County Attorney, Grayson County, Texas,*
By JNO. T. SUGGS, *Ass't.*

The above and foregoing statement of facts, having been submitted to me, has been by me examined and I approve the same as correct and order it to be filed by the clerk in the record as the statement of facts in the above entitled and numbered cause, this 5th day of February, A. D. 1903.

G. P. WEBB,
County Judge, Grayson Co., Texas.

Filed February 7", 1903.

P. F. ELLIS, *Co. Clerk,*
By AMY ELLIS, *Deputy.*

Motion for New Trial.

STATE OF TEXAS, }
Grayson County. }

In the County Court of Grayson County, Texas.

THE STATE OF TEXAS, Plaintiff, }
vs. }
GRANVILLE RIPPEY, Defendant. }

Now comes the plaintiff and files this his motion for a new trial in the above numbered and entitled cause and asks that the judgment entered herein be set aside for the following reasons, viz:

1.

Because the court erred in overruling defendant's motion to quash the purported affidavit and the purported complaint thereupon against the defendant therein in which the defendant charges that the same charged no offense, in that they fail to charge any violation of the law, in that articles 3384 to 3389, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402
12 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, town or city, in which the sale of intoxicating liquor has been prohibited, is also void upon the following grounds and for the following reasons, to-wit:

1st. Because article 3395 of the Revised Statutes of the State of Texas, 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2nd. Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3rd. Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4th. Said local option statute, and especially the said article 3395, constitute class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government, in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views and against other persons

and citizens holding opposite views upon questions of public policy and concern.

5th. Said article 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that, as construed by the court of criminal appeals of the
13 State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6th. That art. 3395 operates to deny the citizens the equal protection of the law, in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise for a period of two years all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such a period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote thereafter as often as they shall see fit.

7th. Said article further denies equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated, and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8th. Said statute further denies equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in a large district to be selected by them, which shall include the said town or city, and in the event the election so to be held in the enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or
14 city. And because said statute further provides that if at an election prohibition should carry in any town or city it cannot be defeated by an inauguration of a subsequest election in an enlarged district, and upon the contrary, provides that when prohibition has been carried, at an an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9th. Said statute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition car-

ries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

2.

Because the said judgment is contrary to law and the evidence.

CLARK & BALINGER,
ETHERIDGE & BAKER,
MOSELEY & EPPSTEIN,
Attorneys for Defendant.

Filed January 16, 1903.

P. F. ELLIS,
County Clerk,
By H. K. ELLIS, *Deputy.*

15 *Order Overruling Motion for New Trial.*

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

Now on this day came on to be heard defendant's motion for a new trial filed in the above numbered and entitled cause, and said motion having been considered by the court, is in all things overruled, and the defendant, Granville Rippey, in open court excepted and gave notice of appeal to the court of criminal appeals for the State of Texas, from the judgment heretofore, to-wit on the 16th day of January, 1903, rendered, which exception and notice of appeal are here now entered of record.

It is therefore ordered and considered by the court that the said defendant, Granville Rippey, enter into a recognizance for an appeal in this cause in the sum of two hundred and fifty dollars, conditioned as required by law. And the said Granville Rippey, being present in custody, unless he enters into such recognizance, is now committed to the county jail of Grayson county, to be therein confined until the decision of the court of criminal appeals of the State of Texas herein can be made and received.

Bills of Exception.

In the County Court of Grayson County, Texas, January Term, A. D. 1903.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY.

Be it remembered that on the 16th day of January 1903, defendant presented the following motion to quash the purported affidavit

and the purported complaint thereupon against him herein, to-wit:

In the County Court of Grayson County, Texas, January Term, 1903.

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. —.

Now comes the defendant, and moves the court to quash the purported affidavit and the purported complaint thereupon against him herein, because the same charge no offense, in that they fail to charge any violation of law, in that articles 3384 to 3399 inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that article 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town, in which the sale of intoxicating liquor has been prohibited, is also void, upon the following grounds, and for the following reasons; to-wit.

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3.

17 Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That art. 3395 operates to deny to the citizens the equal protection of the law in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

18 7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies the equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in an enlarged district, to be selected by them, which shall include the said town or city and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if, at an election, prohibition should carry in a town or city it cannot be defeated by the inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said stitute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in

the entire county no election shall thereafter be ordered in
19 any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

Wherefore, premises considered, defendant prays this honorable court to quash, vacate, set aside and hold for naught the purported affidavit and information exhibited herein against him and as, etc.

Which said motion was in all things overruled by the court, to which ruling of the court defendant then and there excepted, whereupon defendant presents this his bill of exceptions and prays that same may be signed by the court and made a part of the record in this cause, which is accordingly done this 16th day of January, A. D. 1903.

G. P. WEBB,
Judge of the County Court of Grayson County, Texas.

Filed Jan'y 16, 1903.

P. F. ELLIS,
County Clerk,
By H. K. ELLIS, *Deputy.*

Recognizance.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

JANUARY 16", 1903.

This day came into open court, Granville Rippey, defendant in the above numbered and entitled cause, and L. B. Eppstein and L. Sarazen, his sureties, and acknowledge themselves severally
20 indebted to the State of Texas in the penal sum of two hundred and fifty ($250.00) dollars, conditioned that the said Granville Rippey, who has been convicted in this cause of a misdemeanor, to-wit: that on the 8th day of February A. D. 1902 and election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published to determine whether or not the sale of intoxicating liquors should be prohibited in commissioner's precinct No. 4 of said county, and the qualified voters at said election, did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioner's precinct of said county, and thereupon the commissioners' court of said county did

pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said precinct.

And thereafter, on, to-wit, the 18th day of April, 1902, in said commissioners' precinct in said State of Texas and county of Grayson, one Granville Rippey did unlawfully sell to W. J. Anderson, one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State, and his punishment assessed at a fin*d* of twenty fi*fe* ($25.00) dollars and imprisonment in the county jail of Grayson county Texas for twenty days as appears from the judgment herein duly entered in, this cause, shall appear before this court from day to day and from term to term of the same and not depart without leave of this court in order to abide the judgment of the court of criminal appeals of the State of Texas in this cause.

21 *Defendant's Assignments of Error.*

STATE OF TEXAS, }
County of Grayson. }

In the County Court of Grayson County, Texas.

STATE OF TEXAS }
vs. }
GRANVILLE RIPPEY. }

Now on this day comes Granville Rippey and files this his assignment of errors committed by the court on the trial of *of* the above entitled and numbered cause and shows:

1. That the court erred in overruling the defendant's motion to quash the purported affidavit and the purported complaint thereupon against him in this cause, because the same charge no offense, in that they fail to charge any violation of the law, in that article 3384 to 3399, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town, in which the sale of intoxicating liquors has been prohibited, is also void upon the following grounds and for the following reasons, to-wit:

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3.

Said art. 3395 denies to many persons within the jurisdic-
22 tion of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons and citizens holding certain views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That art. 3395 operates to deny to the citizens the equal protection of the law in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

23 7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated and denies to those citizens who oppose prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies the equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immdeiately thereafter, those in favor of prohibition may inaugurate an election in an elnarged district, to be selected by them, which shall include the said town or city and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if, at an election, prohibition should carry in a town or city it cannot be defeated by the inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said statute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in the entire county no election shall thereafter be ordered in
24 any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

CLARK & BALINGER,
ETHERIDGE & BAKER,
MOSELEY & EPPSTEIN,
Attorneys for Defendant.

Filed Jan'y 16", 1903.

P. F. ELLIS,
County Clerk,
By AMY ELLIS, *Deputy.*

25 *Bill of Costs.*

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

Clerk's costs.

Docketing	$ .25
Issuing writ	.75
Entering appearance	.30
Entering continuances	.60
Issuing subpœna	.75
Entering orders	.60
Entering judgment	.50
Filing papers	1.00
Entering motion	.50
Entering recognizance	1.00
Entering commitment	1.00
Making transcript	12.50
Total clerk's costs	$20.00

Sheriff's costs.

Making arrest	1.00
Serving subpœnas	1.50
Taking bond	1.00
Committing prisoner	1.00
Releasing prisoner	1.00
Jury tax	.50
	$6.00

Total clerk's costs	$20.00	
Total sheriff's fees	6.00	
Trial fees	5.00	
County attorney's fees	10 00	
Fine	25.00	& twenty days in jail.
Total costs and fine	$66.00	& twenty days in jail.

Clerk's Certificate.

THE STATE OF TEXAS,
County of Grayson. }

I, P. F. Ellis, clerk of the county court of Grayson county, Texas, do hereby certify that the above and foregoing 28 pages contains a

true and correct transcript of the proceedings had at the
26 January term of the county court of Grayson county, Texas, in cause No. 8532, styled: The State of Texas *vs.* Granville Rippey.

Witness my hand and official seal at office in the city of Sherman, Grayson county, Texas, this 9" day of February A. D. 1903.

P. F. ELLIS,
[L. S.] *Clerk of the County Court of Grayson County, Texas.*
By AMY ELLIS, *Deputy.*

Endorsements of Transcript.

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. 1st Assignment.

From the county court of Grayson county.

Applied for by Moseley & Eppstein, attorneys for appellant on the 16th day of January, 1902, and delivered to Moseley & Eppstein on the 9th day of February, 1903.

P. F. ELLIS,
Clerk County Court, Grayson County.

Filed in court of criminal appeals, at Dallas, Texas the 26 day of February, 1903.

J. M. GASTON,
Clerk Court of Criminal Appeals.

Order Showing Submission in Ct. Crim. App.

In Court of Criminal Appeals, Wednesday, March 4th, 1903.

Submitted on briefs of both parties:
2712—1st. Granville Rippey, from Grayson county.

27 *Opinion of Court of Criminal Appeals.*

Filed March 18, 1903.

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. *1st Assignment.*

Appeal from Grayson County.

Opinion.

This is a conviction for violating the local option law; the punishment assessed being the minimum.

Appellant suggests but one question for decision, to-wit: "That the local option law of this State as embraced in title LXIX of the Revised Statutes, and especially articles 3384–3399 of said statutes, and art. 402 of the Penal Code, prescribing a penalty against any person who shall sell intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor had been prohibited, are invalid, null and void, in that said enactment of the legislature contravened the provisions of the Constitution of the United States, for this: that said enactment abridged the privileges and immunities of citizens of the United States, and deprived a large number of said citizenship, and especially appellant, of liberty and property without due process of law, and deny to a large class of citizenship of the State of Texas, including appellant, the equal protection of the laws, and such legislation constituted class legislation within the meaning of the law."

This case was before us under the writ of *habeas corpus*, at the Austin term, 1902, were these questions were at issue and decided adversely to appellant's contention. *Ex parte* Rippey, 68 S. W. 698. Practically the same questions were involved in Fields *vs.* State, 39 Tex. Cr. 50. In that case the questions were also decided ad-
28 versely to appellant. We see no reason for changing the views heretofore expressed in those opinions, and upon the authority of those cases, the judgment in this case is affirmed.

DAVIDSON,
Presiding Judge.

Delivered March 18, 1903.
Henderson, *J.*, absent.

Filed in court of criminal appeals, at Dallas, March 18, 1903.

J. M. GASTON, *Clerk.*

Judgment of Ct. Crim. App.

Ent. in minutes of said court, vol. 2, page 283.

In Court of Criminal Appeals, State of Texas, Wednesday, March 18th, 1903.

GRANVILLE RIPPEY
vs.
THE STATE. } 2712. 1st —. Form Grayson County.

Opinion by Davidson, P. J.

This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this court that there was no error in the judgment of the court below; it is therefore ordered, adjudged and decreed that said judgment be in all things affirmed. It is further ordered that the State of Texas do have and recover of and from the appellant, Granville Rippey, as principal, and L. B. Eppstein and L. Sarazan as sureties upon his recognizance all costs in this behalf incurred in this court and that this decision be certified below for observance.

29 *Petition and Order for Writ of Error.*

In the Court of Criminal Appeals.

GRANVILLE RIPPEY
vs.
THE STATE OF TEXAS.

To the honorable the Supreme Court of the United States:

Your petitioner, Granville Rippey, a citizen of the State of Texas and of the United States of America comes and respectfully shows that he, your petitioner, on to-wit, January 15th, 1903, in the county court of Grayson county, Texas, was convicted upon information presented in said court of a violation of the local option laws of the State of Texas, embracing article 402 of the Penal Code of said State, as well as articles 3384 to 3399 of the Revised Statutes of said State, and was adjudged to pay a fine of twenty five dollars, and to be confined in the county jail of Grayson county, Texas for a period of twenty days as a punishment under said laws.

Petitioner would further show to the court that prior to said conviction he, this petitioner, in said court, did file his motion in terms of law to quash the complaint and information so filed in said court against this petitioner on the ground that said laws of the State of Texas were violative of and in contravention of the Constitution of

the United States; and in said motion did set forth specifically wherein, according to the opinion of petitioner, said laws did so contravene the Constitution of the United States, which motion to quash was overruled by the court and conviction had as aforesaid.

30 Your petitioner would further show to the court that your petitioner, after said conviction and in due course of the laws of the State of Texas, did appeal from said judgment of the county court of Grayson county, Texas, to the court of criminal appeals of the State of Texas, which last named court is the court of last resort in said State of Texas in criminal matters; and thereafter, to-wit, on the — day of March, A. D. 1903, said judgment of the county court of Grayson county, Texas, was in all things affirmed by said court of criminal appeals of the State of Texas.

Petitioner comes now and shows to the court that there were grave errors committed in said prosecution in the county court of Grayson county and in the affirmance of the judgment of said court by the court of criminal appeals of the State of Texas, and he here now prays the court for a writ of error from the Supreme Court of the United States to the said court of criminal appeals of the State of Texas in order that said errors so committed shall be duly corrected, and full and speedy justice done to your petitioner, and petitioner files herewith a specification and assignment of the errors complained of.

As in duty bound petitioner will ever pray, etc.

F. M. ETHERIDGE,
GEO. CLARK,
D. C. BOLINGER,
Attorneys for Granville Rippey, Petitioner.

GRANVILLE RIPPEY
vs.
THE STATE OF TEXAS.

31 The foregoing application for writ of error having been presented the same is allowed as prayed for upon the plaintiff in error, Granville Rippey, entering into a bail bond in the sum of $500 00 with good and sufficient sureties, conditioned for his appearance before the county court of Grayson county, Texas, from day to day and from term to term there to abide the judgment of the Supreme Court of the United States upon said writ of error and said bail bond shall operate as a supersedeas. This April 8th, 1903.

W. L. DAVIDSON,
Presiding Judge, Court of Criminal Appeals of Texas.

Filed in court of criminal appeals of Texas at Dallas, April 13" 1903.

J. M. GASTON, *Clk.*

Bond for Writ of Error.

GRANVILLE RIPPEY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

THE STATE OF TEXAS,
Grayson County.

Know all men by these presents that we, Granville Rippey as principal and Louis Eppstein and Max Eppstein, sureties are held and firmly bound unto the State of Texas in the sum of five hundred dollars ($500.00) for which sum well and truly to be paid we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed sealed and dated this — day of April, 1903.

The condition of the above obligation is such that whereas, at a term of the county court of Grayson county Texas, upon information duly filed, to-wit; on January 15th, 1903, the principal herein, the said Granville Rippey, was convicted of an offense against the laws of the State of Texas in the criminal proceedings therein had
32 and was sentenced to pay a fine of $25.00 and to be confined in the county jail of said Grayson county, Texas for a period of twenty days. From which judgment of conviction said Granville Rippey did prosecute an appeal to the court of criminal appeals of the State of Texas and in said last named court, to-wit: on the — day of March A. D. 1903, said judgment of conviction was affirmed.

And whereas, since the affirmance of said judgment the said Granville Rippey, principal herein, has applied for and obtained from said court of criminal appeals of the State of Texas, and the presiding judge of said court, a writ of error from the Supreme Court of the United States to said court of criminal appeals of the State of Texas to revise and reverse said judgment, and has applied — and obtained from said court of criminal appeals a supercedeas upon the said Granville Rippey entering into bond in said sum of $500.00.

Now, if the said Granville Rippey will make his personal appearance before the homorable court of Grayson county, Texas and there remain from day to day and from term to term there to abide and perform the judgment of the Supreme Court of the United States upon such writ of error, then and in that event this obligation shall become void; otherwise to remain in full force and effect.

GRANVILLE RIPPEY. [SEAL.]
LOUIS EPPSTEIN. [SEAL.]
M. EPPSTEIN. [SEAL.]

Approved as supersedeas this 8 day of April, 1903.

W. L. DAVIDSON,
Presiding Judge, Court of Crimin- Appeals, State of Texas.

Filed in court of criminal appeals at Dallas, April 13" 1903.
J. M. GASTON, *Clerk.*

33 *Plaintiff in Error's Assignments of Error.*

In the Court of Criminal Appeals.

GRANVILLE RIPPEY
vs.
STATE OF TEXAS. } No. —.

To the honorable the Supreme Court of the United States:

In this case comes petitioner, upon grant of writ of error as prayed for, and files this his assignments of error and specifications of error committed by the court below in the trial of his case:

I.

The court of criminal appeals erred in affirming the judgment of the county court of Grayson county, Texas, because the laws of the State of Texas as embodied in article 402 of the Penal Code of the State, as well as in title LXIX of the Revised Statutes of the State of Texas, and especially articles 3384 to 3399 of said Revised Statutes, and under which enactments a conviction in this case was had are violative of the Constitution of the United States in that said laws abridge the privileges and immunities of citizens of the United States, and deprive certain citizens and class- of citizens, and especially plaintiff in error, of liberty and property without due process of law, and deny to many citzens and class- of citizens within the jurisdiction of the State of Texas the equal protection of the laws.

II.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction against plaintiff in error because the laws of the State of Texas aforesaid constitute class
34 legislation within the meaning of the law, and are antagonistic to the essential principles of free republican government, in that they discriminate in favor of certain persons holding certain views of public policy and against other persons and citizens holding opposite views, and deny equal rights to a large portion of the citizenship of Texas and of the United States, and bestow exclusive privileges upon a large class of other citizens of State of Texas and of the United States and which exclusive privileges are not in consideration of public services rendered.

III.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction against the plaintiff in

error, because article 3395 of the Revised Statutes of the State of Texas operates, and was so intended to operate as a denial to the citizens of Texas and of the United States the equal protection of the law, in that the provisions of said article discriminate against those who vote against prohibition in local option elections, and in favor of those who vote for prohibition; and said statutes further operate to disfranchise, at least for a period of two years, and in many cases for a much longer term, all citizens within a particular territory to be effected by an election who are opposed to prohibition and denies them the right, in frequent instances indefinitely and certainly for a period of two years to legislate upon that question; while upon the other hand it confers that right without limitation upon those who favor prohibition and authorizes the latter class to propose and to legislate by popular vote upon the question as often as they shall see fit.

IV.

The court of criminal appeals of the State of Texas further
35 erred in affirming the judgment of conviction against plaintiff in error, because said article 3395 of the Revised Statutes of the State of Texas denies the equal protection of the law to many citizens of the State of Texas and of the United States, and especially to the plaintiff in error, in that such article provides that a failure to carry prohibition in a city or town shall not prevent an election from being immediately thereafter held for the entire justice precinct or the county in which said town or city is situated and denies the citizens who oppose local option the privilege of so voting and legislating in the event prohibition should carry in a city or town.

V.

The court of criminal appeals of the State of Texas further erred in its affirmance of said judgment of conviction against the plaintiff in error, because said statute further denies the equal protection of the law, and especially to the plaintiff in error, in that it provides that in the event prohibition should fail to carry in a town or city, and immediately thereafter, those in favor of prohibition may inaugurate an election in a larger district to be selected by them, which shall include the said town or city, and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or city. And said statute further provides that if at an election prohibition should carry in a town or city, it cannot be defeated in said town or city by an inauguration of a subsequent election in an enlarged district; but upon the contrary, provides that when prohibition has carried at an elec-
36 tion in a town or city or precinct, such *such* prohibition shall not be repealed except at an election ordered and held for such town, city or precinct.

VI.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction aforesaid against plaintiff in error, because said laws of the State of Texas deny the equal protection of the law, in that they provide that when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered or held in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection, they further provide that should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated such election shall have the effect of abrogating the previous election held in the entire county in so far as the local subdivision is concerned.

For these and other errors apparent of record, plaintiff in error prays the court that the judgment of affirmance by the court of criminal appeals of the State of Texas in the case of plaintiff in error be reversed, and that direction be awarded by this court to the courts of Texas to dismiss the prosecution against the plaintiff in error.

F. M. ETHERIDGE,
GEO. CLARK,
D. C. BOLINGER,
Counsel for Plaintiff in Error.

Filed in court of criminal appeals at Dallas, April 13" 1903.
J. M. GASTON, *Clerk.*

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of *of* criminal appeals of the State of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court of criminal appeals of the State of Texas before you or some of you, in the highest court of the law or equity of the State of Texas in which a decision could be had in a suit or action between The State of Texas as plaintiff and Granville Rippey defendant in a criminal prosecution wherein was drawn in question the validity of a treaty or statute of or authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity: or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption, especially set and claimed under such

clause of the said Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of the said Granville Rippey, as by his complaint appears, we being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held that, the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and
38 according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and of said Supreme Court this 8th day of April one thousand nine hundred and three.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the Circuit Court of the United States,
Western District of Texas,
By J. W. HANCOCK, *Deputy.*

Allowed by
W. L. DAVIDSON,
Presiding Judge of the Court of
Criminal Appeals of the State of Texas.

[Endorsed:] No. 2712 Granville Rippey, pl'ff in error *vs.* The State of Texas def'd't in error Writ of error Filed in court of criminal appeals at Dallas, April 13" 1903 J. M. Gaston, clerk.

39 UNITED STATES OF AMERICA:

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of criminal appeals of the State of Texas, wherein Granville Rippy is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 8th day of April, in the year of our Lord one thousand nine hundred and three.

W. L. DAVIDSON,
Presiding Judge Court Criminal
Appeals of the State of Texas.

In behalf of the State of Texas, defendant in error in the foregoing citation, I hereby accept service of this citation this the 8th day of April, A. D. 1903.

C. K. BELL,
Attorney General for the State of Texas.

Attest: with seal of court.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART, *Clerk*,
By J. W. HANCOCK, *Deputy.*

[Endorsed:] No. 2712 Granville Rippy *vs.* The State of Texas. Citation in error. Filed in court of criminal appeals at Dallas, April 13" 1903 J. M. Gaston clerk.

40 THE STATE OF TEXAS:

I, J. M. Gaston, clerk of the court of criminal appeals of the State of Texas, do hereby certify that the foregoing (40) forty typewritten pages constitute a full, true and correct copy of the record, assignments of error, and of all the proceedings, and the original writ of error and citation in error and waiver endorsed thereon, to the Supreme Court of the United States, at Washington, in the case of Granville P. Rippey against The State of Texas, and that such court is the court of ultimate appeal in criminal cases in the State of Texas, thereof W. L. Davidson is presiding justice.

Seal Court of Criminal Appeals of Texas.

In testimony whereof, I hereunto set my hand as clerk and affix the seal of said court, at my office in Dallas, Texas, this 1st day of May A. D. 1903.

J. M. GASTON, *Clerk.*

[Endorsed:] No. —. Granville Rippey, plaintiff in error, *vs.* The State of Texas, defendant in error. From the court of criminal appeals of the State of Texas, at Dallas. Applied for by Etheridge & Baker, attorneys for plaintiff in error, on the *the* 11th day of April, A. D. 1903, and delivered to Etheridge & Baker on the 1st day of May A. D. 1903.

J. M. GASTON,
Clerk Court of Criminal Appeals of Texas.

Endorsed on cover: File No. 18,919. Texas court of criminal appeals. Term No. 273. Granville Rippey, plaintiff in error, *vs.* The State of Texas. Filed May 6th, 1903.